

# State of South Dakota

EIGHTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2013

781U0067

## HOUSE BILL NO. 1006

Introduced by: Representatives Solum, Hawley, Hoffman, Magstadt, Olson (Betty), Rozum, and Schrempp and Senators Maher, Rampelberg, Rhoden, Sutton, and Tieszen at the request of the Interim Oil and Gas Study Committee

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the termination of  
2 certain mineral interests.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 43-30A-3 be amended to read as follows:

5 43-30A-3. A mineral interest is deemed to be used if:

6 (1) Minerals are produced under that interest;

7 (2) Operations are conducted thereon for injection, withdrawal, storage, or disposal of  
8 water, gas, or other fluid substances;

9 (3) In the case of solid minerals, there is production from a common vein or seam by the  
10 owners of the mineral interest;

11 (4) Any conveyance, valid lease, mortgage, assignment, order in an estate settlement  
12 proceeding, inheritance tax determination affidavit, termination of life estate  
13 affidavit, or any judgment or decree that makes specific reference to the mineral  
14 interest is recorded in the office of the register of deeds for the county in which the



1 mineral interest is located;

2 (5) The mineral interest is subject to an order or an agreement to pool or unitize;

3 (6) Taxes are paid on the mineral interest on behalf of the owner;

4 (7) A statement of claim is recorded in compliance with § 43-30A-4; or

5 (8) ~~Its owner or lessee uses the mineral interest in a manner pursuant to, or authorized~~  
6 ~~by, the instrument creating the mineral interest; or~~

7 ~~—(9)—~~ A proper instrument describing the mineral interest has been recorded prior to an  
8 affidavit recorded under prior law pursuant to § 43-30-7, in the office of the register  
9 of deeds for the county in which the mineral interest is located.

10 Section 2. That § 43-30A-4 be amended to read as follows:

11 43-30A-4. A statement of claim shall:

12 (1) Be recorded for the owner of the mineral interest prior to the end of the  
13 twenty-three-year period set forth in § 43-30A-2, ~~or within two years after July 1,~~  
14 ~~1985, whichever is later.~~ A joint tenant, but not a tenant in common, may record a  
15 claim on behalf of himself and other joint tenants;

16 (2) Contain the name and address of the owner of the mineral interest and a legal  
17 description of the land on or under which the mineral interest is located;

18 (3) Be recorded in the office of the register of deeds for the county in which the mineral  
19 interest is located.

20 A mineral interest is deemed to be in use on the date of recording if the recording is made  
21 within the time provided by this section. A statement of claim filed after July 31, 2013, by a  
22 person other than the owner of record of the mineral interest is not effective to preserve a  
23 mineral interest unless accompanied by a reference to the name of the record owner under whom  
24 the owner of the mineral interest claims.

Section 3. That § 43-30A-5 be amended to read as follows:

43-30A-5. Failure to record the statement of claim within the time period provided in § 43-30A-4 does not cause a mineral interest to be extinguished if ~~the owner of the mineral interest meets all of the following requirements:~~

~~(1) Owns one or more mineral interests in the county in which the mineral interest in question is located at the time of the expiration of the time period provided in § 43-30A-4;~~

~~(2) Inadvertently failed to preserve the mineral interest in question; and~~

~~(3) Within sixty days after completion of the publication of the notice provided for in § 43-30A-6, recorded a statement of claim;~~

(1) The owner of record of the mineral interest satisfies either one of the following requirements within sixty days after first publication of the notice provided for in § 43-30A-6:

(a) Files with the county register of deeds a statement of claim as required in § 43-30A-4; or

(b) Files with the county register of deeds documentation that at least one of the activities under § 43-30A-3 took place during the twenty-year period immediately preceding the first publication of notice;

(2) A person other than the owner of record of the mineral interest files with the county register of deeds within sixty days after the first publication of the notice provided for in § 43-30A-6 an affidavit under oath or a declaration under oath which includes an explanation of the factual and legal basis for the person's assertion of title to the mineral interest. This explanation shall be accompanied by documentation supporting the assertion or an explanation why documentation is unavailable.

1       Section 4. That chapter 43-30A be amended by adding thereto a NEW SECTION to read  
2 as follows:

3       The surface owner of the land in or under which the mineral interest is located who succeeds  
4 to the ownership of a mineral interest upon its lapse under this chapter is entitled to record a  
5 statement of succession in interest indicating that that surface owner of the land in or under  
6 which the mineral interest is located has succeeded to the ownership of the mineral interest.

7       Section 5. That chapter 43-30A be amended by adding thereto a NEW SECTION to read  
8 as follows:

9       To constitute a reasonable inquiry as provided in § 43-30A-6, the surface owner or the  
10 owner's authorized agent shall conduct a search of:

- 11       (1)   The county register of deed's records for the existence of any uses as defined in § 43-  
12           30A-3 by the owner of the mineral interest;
- 13       (2)   The Unified Judicial System's records for the existence of any judgments, liens, or  
14           probate records which identify the owner of the mineral interest;
- 15       (3)   The social security death index for the last-known residence of the owner of the  
16           mineral interest, if deceased; and
- 17       (4)   One or more public internet databases to locate or identify the owner of the mineral  
18           interest or any known heirs of the owner. The surface owner is not required to  
19           conduct internet searches on private fee internet databases.

20       Section 6. That chapter 43-30A be amended by adding thereto a NEW SECTION to read  
21 as follows:

22       Upon completion of the procedure provided in chapter 43-30A, the surface owner may  
23 maintain an action in district court in the county in which the minerals are located and obtain  
24 a judgment in quiet title in the owner of the surface estate. In an action brought under this

1 section, the surface owner shall submit evidence to the district court establishing that all  
2 procedures required by this chapter were properly completed and that a reasonable inquiry was  
3 conducted. If the district court finds that the surface owner has complied with all procedures of  
4 this chapter and has conducted a reasonable inquiry, the district court shall issue its findings of  
5 fact, conclusions of law, and enter judgment perfecting title to the mineral interest in the surface  
6 owner.

7 A judgment obtained by the surface owner in compliance with this section is deemed  
8 conclusive except for fraud, misrepresentation, or other misconduct.

9 A mineral lessee that obtains a lease from the surface owner, which owner has obtained a  
10 judgment to minerals pursuant to this section, is deemed a bona fide purchaser and its lease  
11 remains effective in the event the judgment is subsequently vacated for any reason. The lessee  
12 is not liable to any third party for lease bonus, royalties, or any other proceeds paid to the surface  
13 owner under the lease before the judgment being vacated.